

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**JOHN F. DRISCOLL, as President of the Captains
Endowment Association, Inc., and the CAPTAINS
ENDOWMENT ASSOCIATION, INC.,**

Plaintiffs,

v.

**CITY OF NEW YORK, the NEW YORK CITY
POLICE DEPARTMENT, and RAYMOND W.
KELLY, as Commissioner of the New York City
Police Department,**

Defendants.

**NOTICE OF MOTION
FOR A PRELIMINARY
INJUNCTION**

07 CIV 10359 () ()

Pursuant to Fed. R. Civ. P. 65, plaintiffs respectfully move for entry of a preliminary injunction to enjoin, during the pendency of this action, defendants' unlawful attempts to violate the constitutional rights of plaintiffs and their members by implementing and enforcing a certain Interim Order No. 52, issued on September 30, 2007, with the subject "Alcohol Testing for Uniformed Members of the Service Involved in Firearms Discharges Resulting in Injury to or Death of a Person."

This action is brought by plaintiffs on their own behalf and on behalf of the members of the Captains Endowment Association, Inc. ("CEA"). The grounds for this motion are set forth in the accompanying affidavit of John F. Driscoll, President of the CEA, the verified complaint and its exhibits attached thereto (which have been filed concurrently with this motion), as well as the accompanying memorandum of law setting forth the points and authorities relied upon in support of the motion.

Plaintiffs will move this Court for entry of the aforementioned preliminary

injunction at United States Courthouse, Southern District of New York, located at 500 Pearl Street, New York, New York, on the 13th day of December, 2007, at 9:30 a.m. or as soon thereafter as counsel can be heard.

Plaintiffs have complied with Fed. R. Civ. P. 65 in bringing this application and have provided notice of this application to Defendants. (Notice was provided to Michael A. Cardozo, Corporation Counsel of the City of New York, 100 Church Street, New York, New York 10007, counsel for Defendants, prior to the filing of this application). Plaintiffs are prepared, as the Court deems proper, to post a security for the payment of any costs and damages as may be incurred or suffered by any defendant who later is found to have been wrongfully enjoined or restrained.

Dated: 12 November , 2007

Respectfully submitted,

Greenberg Burzichelli Greenberg P.C.

By: 

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